

# UST Facility Compliance Inspection Handbook

## Part III - The Follow-up

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### PART III - THE FOLLOW UP

#### A. Writing the Inspection Report

Do you like to write inspection reports?

When you get back to the office after an inspection, do you have the time to sit right down and write your report?

What about the follow-up letter to the owner/operator/property owner/corporation/partnership/etc? Do your letters go through several levels of management and equally as many edits?

There are many reasons to delay following up on an inspection. Sometimes you'll be so happy to be finished with an inspection, you won't want to prolong it by doing a report right away. But, how are you going to remember all the little details of what you said and what he said and what you saw if you don't transcribe your field notes right away?

And what if you visit more than one facility in a day? Keeping the details separate and getting them in the right report could be challenging if you wait too long.

The preferred method is to issue some form of documentation in the field the day of the inspection and follow-up with a more complete written report.



#### B. Tracking UST Site Activity

Does your agency have a system for tracking compliance?

You need an organized, reliable system for making sure violations are corrected within a prescribed time frame. You also need to know when your next inspection is due.

You could enter your field notes into a computerized data base or spreadsheet that gives you printouts with target compliance dates. You could also use a wall calendar for tracking your inspections. If you're not going to do a re-inspection, but are requiring the owner to get back to

you in writing, this needs to be tracked also.



## C. Dealing with Violations

### IF YOU FOUND NO PROBLEMS DURING YOUR INSPECTION . . .

You should follow up with the tank owner even if you found no problems. A certificate of compliance and form letter thanking him for his time and cooperation (or the time and cooperation of his operator) would go a long way towards maintaining a good relationship. If the facility was exemplary, the letter could also say that.



### WHAT TO DO ABOUT VIOLATIONS

Each local agency decides for itself what activities constitute minor infractions and what constitutes major violations. The legal department of each agency will have a hand in determining UST enforcement actions. Your agency should have enforcement mechanisms in place.

Remember to match the consequence with the violation. You don't want to criminally prosecute a tank owner for being two days late in submitting his tank test results. You also don't want to let a tank owner collect warning notices that go unresolved.



### SEPARATING MINOR PROBLEMS FROM MAJOR VIOLATIONS

The decision whether and how to pursue violators should be based on the following factors:

- **The nature of the violation** - Most often, you can avoid enforcement action for minor things such as unlabeled manhole covers, sloppy recordkeeping, and dirty sump areas.
- **The potential for harm** - Is there a real threat to public safety and the environment?
- **The violator's compliance history**- If there have been violations in the past, what was your degree of success in getting compliance?
- **Special, unusual, or other mitigating circumstances.**

Once you have identified a violation, you need to present it to the tank owner in your inspection report. Be clear about what the tank owner has done to violate the law, regulations, or the conditions of his operating permit.

Are you going to have the tank owner call you once he's corrected the problems? Will you have him put it in writing? Or are you going back to the facility to make sure he has fixed the problems? In a perfect world, you would have the time to make a visit on the date set for compliance. But since you may not have the time to do this, at least get a letter signed by the owner, saying he's met your requirements.

Because they don't involve significant threats to public health or the environment, you may consider these violations to be minor issues if they are first-time offenses:

- Failing to report a change of ownership within 30 days.
- Failing to submit or being late to submit a tank test report.
- Failing to show proof of financial responsibility.
- Failing to enter into an agreement with the operator regarding his responsibility to monitor tanks and keep necessary records.

You may consider these violations more serious because they have the potential to seriously harm public health or the environment if not remediated:

- Failing to monitor a tank according to the methods specified in the operating permit. This includes disconnecting a monitoring device or alarm system.
- Failing to properly repair a tank.
- Failing to report a release.
- Failure to take immediate action to clean up a contaminated site.
- Falsifying records including monitoring records and tank and piping test reports.



## **IDENTIFY THE CONSEQUENCES OF NONCOMPLIANCE**

If you make it clear to the tank owner that you will follow up to make sure the violations are corrected - or else - you need to identify the “or else”, and you need to actually follow up.

If you have a track record of checking for compliance after discovering problems and allowing for realistic and flexible deadlines, you're more likely to obtain voluntary compliance from tank owners.

Let the tank owner know that your efforts to obtain compliance will become increasingly vigorous and may ultimately result in criminal or civil filings.



## **SUSPENDING THE OPERATING PERMIT**

Are you going to suspend the operating permit? If so, at what point are you going to take this action? After two contacts with the owner with no results? After three?

Suspending the operating permit may not have an effect on a tank owner who has a history of noncompliance. After all, if he can still get deliveries to his tanks, business isn't interrupted. However, if his insurance carrier discovers that he is out of compliance, and threatens to cancel coverage, this might have an influence on the tank owner's decision to accept responsibility for his tanks.



## **LOCKING DOWN THE FACILITY**

Do you have a local ordinance that authorizes you to shut the station down for noncompliance? This is, of course, an extreme measure, and should be used as a last resort. Dealing with recalcitrant tank owners calls for drastic measures.



## **ELIGIBILITY FOR THE CLEANUP FUND**

Tank owners who do not comply with the requirements of the law and regulations are not eligible for reimbursement of corrective action costs from the Cleanup Fund.



## **STALLED REAL ESTATE TRANSACTIONS**

If the tank owner decides to sell his property, he may have problems finding interested buyers. Potential buyers may shy away from properties that have a history of problems with regulatory agencies.



## **FINANCIAL PENALTIES**

Section 25299 H&SC (see Appendix K) says that the owner and the operator of an underground tank can be fined between \$500 and \$5,000 per tank per day for certain violations.

This section also says that the fine is between \$5,000 and \$10,000 for falsifying monitoring records.

Who assesses these fines? The city or district attorney. The Attorney General can also pursue criminal or civil penalties.



## **LOCAL FIELD CITATION PROGRAM**

Does your agency have a field citation program? In order to issue field citations, there must be a provision for this in your local UST ordinance. The amount of fines assessed and the specific violations for which they may be assessed must be spelled out in the enabling ordinance.



## **OUTREACH TOOLS**

There are several things you can do to get general UST information to tank owners and operators. These tools can be used to encourage voluntary compliance and educate the regulated community:

- Publish notices of new requirements (local ordinances and state and federal regulations) in local newspapers and trade newsletters.
- Host workshops where you have staff available to answer questions.
- If your budget allows, distribute flyers, stickers, magnets, calendars, note paper, etc. with your telephone number so tank owners and operators can call with their questions.

